

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CAROLYN VENTERS
Claimant

VS.

GERARD AIRCRAFT, INC.
Respondent
Uninsured

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Docket No. 248,953

ORDER

Claimant appeals Administrative Law Judge Pamela J. Fuller's May 22, 2001, preliminary hearing Order Denying Medical Treatment.

RECORD

At the May 7, 2001, preliminary hearing, the parties agreed that the preliminary hearing record for the Administrative Law Judge's May 22, 2001, preliminary hearing order would consist of both the May 7, 2001, preliminary hearing transcript and exhibits and the previous December 13, 1999, preliminary hearing transcript and exhibits.

ISSUES

This is the second preliminary hearing held in this case. The first was held on December 13, 1999, and resulted in a December 28, 1999, preliminary hearing Order that denied claimant's request for preliminary benefits. The Administrative Law Judge (ALJ) denied the claimant's request for preliminary benefits because claimant failed to prove she served upon respondent a timely written claim for compensation as required by statute.¹ At the December 13, 1999, preliminary hearing, claimant appeared pro se and respondent corporation appeared by its owners Luke and Julie Gerard.

¹See K.S.A. 44-520a (Furse 1993).

Both the claimant and respondent were represented by counsel at the May 7, 2001, preliminary hearing. Respondent, however, is uninsured.

In the May 22, 2001, preliminary hearing order the ALJ again denied claimant's request for preliminary benefits. In that order, the ALJ did not state the reason she denied claimant's request for preliminary hearing benefits.

On appeal, claimant's application for review identifies the issue as "Whether the claimant gave timely notice of her work related injuries." In her brief before the Appeals Board (Board), claimant argues she proved through her testimony and the information contained in a letter to claimant's husband from his employer's health insurance agent that she gave respondent timely notice of accident. The claimant does not address the timely written claim issue.

The Board does not have the benefit of respondent's arguments concerning any of the issues raised because respondent did not file a brief before the Appeals Board.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments contained in the claimant's brief, the Appeals Board finds the ALJ's preliminary hearing Order Denying Medical Treatment should be affirmed.

The Board finds the preliminary hearing record established through the testimony of claimant, Luke Gerard and Julie Gerard that claimant gave respondent timely notice that she allegedly suffered some type of heat related illness caused by the hot temperature environment while she was working for the respondent on June 20, 1997.

The Board concludes based on a review of both the December 13, 1999, and May 7, 2001, preliminary hearing transcripts and exhibits, that the ALJ more likely denied claimant's request for medical treatment based on claimant's failure to prove she satisfied the statutory requirements of the timely written claim statute.² This conclusion is supported by the fact, in the first preliminary hearing order entered on December 28, 1999, the ALJ denied claimant's request for medical treatment because she failed to prove she served upon respondent a timely written claim for compensation.

After claimant allegedly was overcome by heat at work on June 20, 1997, she sought medical treatment with a local physician, Bill Troup, M.D. The claim for payment of Dr. Troup's medical services was filed with claimant's husband's employer's health insurance plan. Admitted as exhibit one into the May 7, 2001, preliminary hearing is a letter dated July 12, 1997, to claimant's husband from the insurance agent who administers

² See K.S.A. 44-520a (Furse 1993).

claimant's husband's employer's private health insurance plan.

Claimant testified she took the July 12, 1997, insurance letter out to Luke and Julie Gerard and they helped her fill out the questions contained in the letter. Those questions generally requested information on what date the accident occurred, where the accident occurred, and if the accident occurred at work. Claimant testified that the handwriting that answered those questions was hers. She indicated that the accident occurred at work on June 20, 1997, when she was exposed to excessive heat. Claimant also testified that the Gerard's requested her to sign a copy and the copy was filed in her employee file.

Both Luke and Julie Gerard also testified before the ALJ at both preliminary hearings. At the May 7, 2001, preliminary hearing, both denied that they had helped claimant answer the questions contained in the insurance letter and both denied that they had ever seen the letter. The Gerards did admit that they paid some medical expenses for claimant's medical treatment following her heat exposure. Julie Gerard testified at the December 13, 1998, preliminary hearing that she remembered paying the Stanton County Hospital bill. Medical records admitted into the December 13, 1999, preliminary hearing indicate that claimant had some diagnostic testing done at Stanton County Hospital on July 1, 1997.

Claimant argued in her brief that both Luke Gerard and Julie Gerard had testified at the December 13, 1999, preliminary hearing that they had neither received nor otherwise identified the July 12, 1997, insurance letter which was admitted as exhibit one in the May 7, 2001, preliminary hearing. But the Board has reviewed the December 13, 1999, preliminary hearing transcript and finds, that the July 12, 1997, insurance letter was not admitted into the preliminary hearing record until the May 7, 2001, preliminary hearing. In fact, the references claimant makes in her brief to the December 13, 1999, preliminary hearing record to verify that the Gerard's identified the July 12, 1997, insurance letter are references to statements received from the benefits administrator of the health insurance plan denying payment for claimant's medical expenses incurred because "Work incurred/related claims not covered."

The Board concludes the first written claim for compensation that the preliminary hearing record or the Division of Workers Compensation file contains is claimant's Application for Hearing that was filed on November 4, 1999. This Application for Hearing was sent by the Division to the respondent on November 10, 1999. There is no record that respondent filed an Employer's Report of Accident with the Division after receiving notice from claimant that she was overcome by heat on June 20, 1997. Thus, claimant had one year from the date of accident, June 20, 1997, or one year from the date of last medical treatment authorized by the employer to serve upon the employer a written claim pursuant to K.S.A. 44-520a.³ As noted, the Application for Hearing was sent to respondent on

³See K.S.A. 44-557(c) (Furse 1993).

November 10, 1999, and claimant's accident was June 20, 1997, and the preliminary hearing record established the last medical treatment was provided by respondent July 1, 1997, therefore, the written claim was out of time and benefits are denied.

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Pamela J. Fuller's May 22, 2001, preliminary hearing Order Denying Medical Treatment, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August, 2001.

BOARD MEMBER

c: Stanley Juhnke, Hutchinson, KS
Edward Heath, Jr., Wichita, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director